and termination to the incremental costs of providing those services.[45] This request is inconsistent with the statute and the First Interconnection Order.

The Act states that rates for transport and termination should be based on "a reasonable approximation of the additional costs of terminating such calls."[46] The TELRIC standard mandated by the Commission limits profit (improperly, in PTG's view) to the cost of capital, which plainly is one of the additional costs of transport and termination that may be recovered under Section 252(d)(2). Likewise, shared and common costs are legitimate additional costs incurred in providing transport and termination. Finally, the Commission has accommodated the statutory standard of "additional costs" by clarifying that the relevant end office switching costs for transport and termination exclude non-traffic sensitive costs.[47] Consequently, no further action is needed on reconsideration.

III. THE COMMISSION SHOULD NOT EXPAND ITS UNBUNDLING REQUIREMENTS.

Section 251(c)(3) of the Telecommunications Act requires incumbent LECs to provide nondiscriminatory access to unbundled network elements, at any technically feasible point, in a manner that allows requesting carriers to combine such elements in

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[45] NCTA Petition at 7-14; TCG Petition at 6-9.

[46] 47 U.S.C. § 252(d)(2)(A).

[47] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration, CC Docket No. 96-98, FCC 96-394, at ¶ 6 (rel. Sept. 27, 1996).

order to provide telecommunications services.[48] In the First Interconnection Order, the Commission determined that incumbent LECs must provide access to the following unbundled network elements: local loops; network interface devices; local and tandem switching capabilities; interoffice transmission facilities; signaling networks and call-related databases; operations support systems; and operator services and directory assistance. The Commission also held that states may require incumbent LECs to offer additional unbundled elements.[49]

Even though the Commission determined that these issues are best addressed by the states -- and many states already are considering whether to order additional unbundling in the context of specific arbitrations -- some CLCs have requested that the Commission require additional unbundling. Specifically, these CLCs urge the Commission to mandate unbundled access to sub-loop elements, AIN switch triggers, and dark fiber. None of these requests has merit.

A. Sub-loop unbundling of Pacific Bell's and Nevada Bell's networks is not technically feasible.

In the First Interconnection Order, the Commission declined to order sub-loop unbundling, concluding that the "proponents of subloop unbundling do not address certain technical issues raised by incumbent LECs," and that the technical feasibility issues were best addressed on a case-by-case basis by state commissions.[50] In spite of

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[48] 47 U.S.C. § 251(c)(3).

[49] First Interconnection Order at ¶ 366.

[50] First Interconnection Order at ¶ 391.

this determination, several petitioners now assert -- without support -- that such unbundling is technically feasible.[51] At least in the context of Pacific Bell's and Nevada Bell's networks, these petitioners are mistaken.

As Pacific Bell has demonstrated in arbitration hearings before the CPUC, sub-loop unbundling raises serious risks to network reliability and will impede customer service. Pacific Bell uses dedicated facilities for the vast majority of its network, so it has no distinct feeder or distribution plant.[52] In addition, Pacific Bell generally does not deploy concentrators in its network, instead using digital loop carrier equipment. The entire purpose of this design is to preserve network integrity and avoid the problems that can arise from having technicians -- whether employed by Pacific Bell or a CLC -- continually uncovering, breaking apart, and splicing together loop plant. These problems include:

- an increased risk of service interruption and impairment;
- an increased risk of cross-service interference resulting from inadequate spectrum management; and
- the inability of Pacific Bell to continue remote testing from the mainframe all the way to the customer's premises (as it currently does for roughly 99 percent of its access lines), requiring it to dispatch a technician to test its portion of the loop plant.

In the arbitrations in which Pacific Bell has participated, no CLC has identified any methods for overcoming these problems. Accordingly, the Commission should leave

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[51] ALTS Petition at 11-12; MCI Petition at 16-20; MFS Petition at 9-11.

[52] The vast majority of Nevada Bell's network is engineered the same way.

the sub-loop unbundling issue to state commissions, which can carefully consider the particular network designs of individual ILECs in assessing whether disaggregation of the local loop is technically feasible.

B. Permitting CLCs to have unmediated access to AIN switch triggers would raise grave network reliability concerns.

In the First Interconnection Order, the Commission determined that "there is not enough evidence in the record to make a determination as to the technical feasibility of interconnection of third party call-related databases [SCPs] to the incumbent LEC's signaling system."[53] The Commission recognized that several incumbent LECs (including Pacific Bell) expressed concern that allowing third parties to connect their Advanced Intelligent Network ("AIN") SCPs to the incumbent's switch "would leave their switch vulnerable to a multitude of potential harms because sufficient mediation for such interconnection does not currently exist at the STP or SCP and has not yet been developed."[54] Consequently, the Commission instructed the states to determine whether such interconnection arrangements are technically feasible and expressed an intent to address this issue in early 1997.[55]

MCI now asserts, without presenting meaningful evidence, that access to AIN switch triggers (call processing instructions resident in ILEC AIN-capable switches)

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[53] First Interconnection Order at ¶ 501.

[54] Id.

[55] Id. at ¶ 502.

from third-party SCPs is technically feasible.[56] Pacific Bell, however, has presented extensive testimony in several CPUC arbitration proceedings demonstrating that allowing third parties to control Pacific Bell's AIN triggers could produce an immediate and significant threat to the dependability of the network. Such unmediated access raises problems in two areas: testing of CLC AIN services outside the ILEC's platform, and deployment of CLC AIN services on CLC SCPs rather than ILEC SCPs.

AIN technology is not sufficiently developed to allow multiple parties to issue instructions to an ILEC's switch without risking harmful feature interactions which could disrupt service.[57] Existing mediation in the SS7 network is not designed to guard against destructive feature interactions. Accordingly, testing must be conducted on the ILECs' platforms because only the ILEC will be aware of all potential AIN-based services that may be deployed by itself and all other parties using the ILECs' switches.

With respect to deployment of AIN services, use of third-party SCPs with different timing characteristics and default conditions than those used in Pacific Bell's network would raise serious risks of service outages affecting all users served by a particular ILEC switch -- not, as MCI claims, only those obtaining service from the CLC. Given the gravity of these risks, a reconsideration proceeding is a singularly

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[56] MCI Petition at 24-28.

[57] The Commission itself noted feature interaction may cause network failure. See In the Matter of Intelligent Networks, 8 FCC Rcd 6813, 6816 (1993).

unsuitable avenue for determining whether unmediated access to AIN triggers should be provided. The Commission should leave this issue to the states, which can conduct detailed evidentiary hearings and give due consideration to the potentially detrimental impact on local service.

In accordance with the First Interconnection Order, Pacific Bell will provide mediated access to its AIN service management systems and service creation environment. Such access will allow competing providers to design and deploy their own AIN-based services without endangering network reliability. In addition, in order to develop possible methods for expanded third-party access, PTG supports initiation of a meaningful AIN trial, involving several carriers, multiple customers, and the passing of unlimited TCAPs (instruction messages) in an uncontrolled situation, as will occur under real-world operating conditions. It is only through such a trial that the effectiveness of potential mediation mechanisms may be determined. Unlike the BellSouth/AT&T trial, which did not test feature interaction, a trial of the complex interactions of many features is required to determine if third party access to AIN switch-triggers can be made feasible. The Industry Intelligent Network Project, which began to address this issue in mid-October, represents an excellent vehicle for expeditiously and efficiently testing mediation and implementation techniques. The Commission accordingly should deny MCI's request.

C. Dark fiber is not a network element.

The Commission concluded in the First Interconnection Order that it did not have sufficient evidence to determine whether dark fiber is a network element.[58] AT&T and MCI now seek reconsideration of this decision, claiming that dark fiber must be provided as a network element.[59] These parties do not demonstrate, however, that dark fiber meets the definition of network element in Section 3(29) of the Act. PTG believes that it plainly does not, because, by definition, it is not "used in" the provision of a telecommunications service: it is merely unused strands of glass in the ground.

If the Commission nonetheless concludes that dark fiber should be considered a network element, it should not require ILECs to provide dark facilities to CLCs where ILECs plan to make use of that plant. The Commission has properly determined that ILECs do not have to build inter-office facilities for CLCs.[60] Compelling ILECs to offer to third parties facilities planned for their own use would negate this holding by forcing the ILEC to become a contractor for CLCs and construct new facilities to replace the ones being held in reserve.

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[58] First Interconnection Order at ¶ 450.

[59] AT&T Petition at 35-37; MCI Petition at 20-23.

[60] See, e.g., First Interconnection Order at ¶ 451.

IV. THE ADDITIONAL RESALE RULES SOUGHT BY PETITIONERS ARE WITHOUT BASIS IN THE ACT AND CONTRARY TO SOUND POLICY.

A. The Commission's rule on short-term promotions does not constitute an unreasonable or discriminatory restriction on resale.

In the First Interconnection Order, the Commission determined that ILECs should be permitted to offer promotions of up to 90 days without incurring resale obligations, because such limited promotions "may serve procompetitive ends through enhancing marketing and sales-based competition." The Commission further found that these "procompetitive effects will outweigh any potential anticompetitive effects."[61] AT&T and MCI nonetheless ask the Commission to mandate resale of all short-term promotions, and MCI urges, in the alternative, that the Commission adopt detailed rules to assure no abuse of the 90-day exception.[62]

Sections 251(b)(1) and 251(c)(4)(B) require that any resale restrictions not be unreasonable or discriminatory.[63] Allowing ILECs to deny resale of short-term promotions is consistent with this statutory imperative. In order to bolster interest in services, companies in competitive markets frequently run specials at an attractive introductory rate in order to entice customers to try the service. Indeed, promotions are critical sales and marketing tools, and any further limitations on the ILECs would effectively neutralize their ability to compete.

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[61] Id. at ¶ 949.

[62] AT&T Petition at 29-31; MCI Petition at 8-12.

[63] 47 U.S.C. §§ 251(b)(1), 251(c)(4)(B).

MCI's request for clarification that short-term promotions are only exempted from the Section 251(c)(4) wholesale pricing obligation, not the Section 251(b)(1) resale obligation, is therefore both contrary to sound policy and entirely without basis.[64] What MCI is requesting is not a clarification of the Commission's Rules, but rather a complete reversal in the Commission's position. In the First Interconnection Order, the Commission concluded "that short-term promotional prices do not constitute retail rates for the underlying services and are thus not subject to the wholesale rate obligation."[65] Moreover, Section 51.613(a)(2) of the Rules makes clear that retail services, whether included in a promotion or not, are to be resold only at the "ordinary retail rate" less the wholesale discount and that qualifying promotional rates are only available to retail customers. Because short-term promotions are not sold at an "ordinary retail rate," the Commission properly concluded that they are not subject to the wholesale pricing obligation.

The Commission likewise should reject the alternative rules sought by MCI to prevent "abuse" of short-term promotions. MCI requests that the Commission require the expiration of at least one year between promotions for the same underlying service and prohibit the use of promotional rates for an existing service that has been repackaged.[66] MCI also asks the Commission to prohibit ILECs from extending

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[64] Id. It also effectively concedes that promotions are not, in fact, telecommunications services subject to resale.

[65] First Interconnection Order at ¶ 949.

[66] MCI Petition at 10.

short-term promotions not offered with a wholesale discount beyond the 90-day time limit and to define a "promotion" as a "temporary incentive for customers to purchase an additional product or service" rather than as a "temporary price discount."[67] These suggestions improperly presume bad faith by ILECs and ignore the ability of state commissions to assure compliance with the short-term promotion rules. In addition, MCI's proposed definition is a blatantly anticompetitive attempt to prevent ILECs from responding to either general or specific solicitations from existing competitors (e.g., for intraLATA toll services) and new entrants. Allowing CLCs to pick off ILECs' customers with impunity is not competition.

B. Expansion of the grandfathering rules would make it unreasonably difficult for ILECs legitimately to withdraw services.

The Commission concluded in the First Interconnection Order that any regulation of the withdrawal of services is best left to the states, but required that "when an incumbent LEC grandfathers its own customers of a withdrawn service, such grandfathering should also extend to reseller end users."[68] MFS seeks to expand the grandfathering rules to allow CLCs to continue to provide grandfathered services to all end users for as long as those services are provided to any end users of the ILEC.[69] This request is plainly unwarranted.

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[67] Id. at 10, 11.

[68] First Interconnection Order at ¶ 968.

[69] MFS Petition at 24-25.

The Commission's policy on grandfathering properly recognizes that ILECs have legitimate business reasons for discontinuing particular service offerings. Services may be grandfathered because they use outdated technology or generate costs that cannot be fully recovered. The Commission should not permit CLCs to expand the use of services under such circumstances. Similarly, MFS's proposed limitation would impair the ability of ILECs to modify their menu of service offerings in light of new competition. The flexibility to do so is critical, given the artificial rate relationships and mandatory below-cost pricing used to support specific customer groups in the old monopoly environment. Granting MFS's request also would give CLCs an unfair advantage: ILECs would be limited to serving existing customers of the grandfathered service, but CLCs would be free to market that service to any customer.

The CPUC, like most (if not all) state commissions, has tariff review rules that apply whenever an ILEC seeks to modify or withdraw a service offering.[70] Forcing ILECs to continue to provide withdrawn services to any new reseller customers would ignore this safeguard and unduly interfere with state jurisdiction over intrastate retail (end user) services.[71] Whatever basis there may be in the Act for the Commission to

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[70] As an added protection, Pacific Bell's proposed interconnection contract already assures CLCs of substantial advance notice before any service will be withdrawn.

[71] MCI likewise urges that the Commission permit state commissions to grant an ILEC's petition to withdraw a service available for resale only if the ILEC demonstrates that it has no demand for that service either from an end user or another telecommunications service provider or that the relevant service has been effectively replaced by another service at comparable rates, terms, and conditions. MCI Petition (continued...)

assert jurisdiction over intrastate offering of unbundled elements and resale provided to CLCs, there is no basis at all for claiming jurisdiction over intrastate retail services, as this Commission's own counsel has recognized.[72]

C. The Commission should deny MFS's request for national rules limiting the use of geographic and premises restrictions that have an effect on resale.

The First Interconnection Order established a rebuttable presumption that limitations on resale, other than those identified in the Rules, are unreasonable. ILECs, however, are permitted to demonstrate to state PUCs that such limitations are in fact reasonable and should be maintained. MFS asks the Commission to reconsider its deference to the states by articulating national rules that would presume unreasonable any tariff condition or limitation that has a disparate or disproportionate effect on resellers as compared to end users.[73] Such action would unjustifiably expand the Commission's control over intrastate communications services and preclude states from considering the need for terms of service that result from state-mandated pricing relationships.

For example, Pacific Bell has argued in the context of CPUC arbitration hearings that certain geographic and premises terms and conditions related to retail

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[71](...continued)
at 7-8. Granting this request would result in an unjustified expansion of Commission authority.

[72] See note 43, supra.

[73] MFS Petition at 22.

services must be extended to resellers in order to preserve support flows used to assure that residential rates remain affordable. Granting MFS's request would prevent the CPUC from determining whether such limitations remain necessary and, if it removes the limitations, from minimizing the adverse consequences in an orderly and rational manner. The states are in the best position to determine the reasonableness of resale restrictions based on local conditions. The Commission accordingly should not disturb its finding that resale restrictions should be reviewed by the states.

V. FOR RECIPROCAL COMPENSATION PURPOSES, THE LOCAL CALLING AREA MUST BE DEFINED IN ACCORDANCE WITH THE ILEC'S STATE-DEFINED BOUNDARIES.

In the First Interconnection Order, the Commission provided that the local calling area for CLCs should be defined as identical to the ILEC's local calling area for purposes of reciprocal compensation.[74] NCTA now asks the Commission to permit each CLC to define its own local calling area for compensation purposes.[75] The Commission must reject this request.

Under the current rules, CLCs are free, if permitted to do so by state regulators, to define any size local calling area they wish for pricing their services to end users. Accordingly, they are not impeded from competing with ILECs by offering expanded toll-free calling areas. For carrier-to-carrier compensation purposes,

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[74] For CMRS providers, the Commission defined the local calling area as the MTA.

[75] NCTA Petition at 24-26.

however, ILECs must be assured of recovering the costs of terminating calls. If a CLC were permitted to define an extremely wide local calling area and hand off a call to the ILEC far from the point of termination, the ILEC might well incur costs that would not be recovered through averaged reciprocal compensation rates (and certainly would not be recovered if a bill and keep mechanism were used). In addition, defining an extremely large local calling area would allow CLCs to avoid access charges even when the ILEC incurs substantial access costs. Therefore, although CLCs should remain free to compete with ILECs by defining different local calling areas for customer pricing purposes, ILECs should receive compensation based on the ILEC local calling area to ensure that all transport and termination costs are recovered.

VI. THE COMMISSION CAN NOT REQUIRE COLLOCATION OF ANY KIND OF SWITCHING EQUIPMENT.

The First Interconnection Order properly states that ILECs need not permit collocation of switching equipment. In so holding, the Commission decided "not [to] impose a general requirement that switching equipment be collocated since it does not appear that it is used for actual interconnection or access to unbundled network elements."[76] Because such equipment is not used for interconnection or access to unbundled network elements, its collocation may not be mandated under Section 251(c)(6), which requires collocation only of equipment "necessary for interconnection

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[76] First Interconnection Order at ¶ 581.

or access to unbundled elements."[77] Nonetheless, AT&T and MFS ask the Commission to rule that CLCs should be permitted to collocate packet switches and remote switch modules, claiming that such equipment does not raise the same space concerns as regular switches.[78]

These parties have stated no basis for reconsideration. The bar on switching equipment is based on the language of Section 251(c)(6). Prior to passage of the 1996 Act, the Court of Appeals for the D.C. Circuit determined that the Commission did not have the statutory authority to require physical collocation.[79] The Commission's power to mandate collocation consequently is defined entirely by Section 251(c)(6). Because the equipment identified by AT&T and MFS is not used for purposes recognized under that section -- interconnection or access to unbundled elements -- the Commission cannot mandate its collocation.

VII. CONCLUSION

The Commission should refrain from adopting any of the CLCs' proposals. The Eighth Circuit's stay sends a strong message that national rules regarding pricing, and any other matters where the Act does not confer undisputed jurisdiction on the Commission, are legally suspect. Proponents of an even more aggressive federal role

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[77] See 47 U.S.C. § 251(c)(6).

[78] AT&T Petition at 31-34; MFS Petition at 11-14.

[79] Bell Atlantic Telephone Companies v. F.C.C., 24 F.3d 1441 (D.C. Cir. 1994).

than that defined in the First Interconnection Order face a high burden of persuasion -- a burden that plainly has not been met.

The CLCs have asserted no basis for grant of their requests. Their proposed modifications to the pricing rules would force ILECs to underwrite competitive entry, work an unconstitutional taking, and harm consumers. Their proposed expansion of the unbundling requirements would raise serious risks to network reliability. And, their proposed restrictions on ILEC business initiative would preclude meaningful competition. The Commission must reject the CLCs' petitions.

Respectfully submitted,

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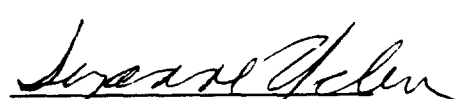
By: 

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* For conflict reasons, Wiley, Rein & Fielding did not advise PTG regarding LEC/CMRS interconnection issues in connection with this Opposition.

CERTIFICATE OF SERVICE

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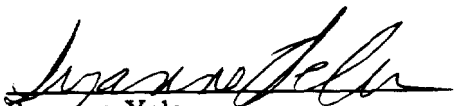

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